

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, if there is a surviving spouse and at least one "covered" child of the deceased covered Part E employee who is living at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each "covered" child of the employee who is living at the time of payment.

**§ 30.502 When is entitlement for survivors determined for purposes of EEOICPA?**

Entitlement to any lump-sum payment for survivors under EEOICPA, other than for "covered" children under Part E, will be determined as of the time OWCP makes such a payment. As noted in § 30.500(a)(2) of these regulations, a child of a deceased Part E employee will only qualify as a "covered" child of that individual if he or she satisfied one of the additional statutory criteria for a "covered" child as of the date of the deceased Part E employee's death.

PAYMENT OF CLAIMS AND OFFSET FOR  
CERTAIN PAYMENTS

**§ 30.505 What procedures will OWCP follow before it pays any compensation?**

(a) In cases involving the approval of a claim, whether in whole or in part, OWCP shall take all necessary steps to determine the amount of any offset or coordination of EEOICPA benefits before paying any benefits, and to verify the identity of the covered Part B employee, the covered Part E employee, or the eligible surviving beneficiary or beneficiaries. To perform these tasks, OWCP may conduct any investigation, require any claimant to provide or execute any affidavit, record or document, or authorize the release of any information as OWCP deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person or persons. OWCP shall also require every claimant under Part B of the Act to execute and provide any necessary affidavit described in § 30.620 of these regulations. Should a

claimant fail or refuse to execute an affidavit or release of information, or fail or refuse to provide a requested document or record or to provide access to information, such failure or refusal may be deemed to be a rejection of the payment, unless the claimant does not have and cannot obtain the legal authority to provide, release, or authorize access to the required information, records, or documents.

(b) To determine the amount of any offset, OWCP shall require the covered Part B employee, covered Part E employee or each eligible surviving beneficiary filing a claim under this part to execute and provide an affidavit (or declaration made under oath on Form EE-1 or EE-2) reporting the amount of any payment made pursuant to a final judgment or settlement in litigation seeking damages. Even if someone other than the covered Part B employee or the covered Part E employee receives a payment pursuant to a final judgment or settlement in litigation seeking damages (*e.g.*, the surviving spouse of a deceased covered Part B employee or a deceased covered Part E employee), the receipt of any such payment must be reported.

(1) For the purposes of this paragraph (b) only, "litigation seeking damages" refers to any request or demand for money (other than for workers' compensation) by the covered Part B employee or the covered Part E employee, or by another individual if the covered Part B employee or the covered Part E employee is deceased, made or sought in a civil action or in anticipation of the filing of a civil action, for injuries incurred on account of an exposure for which compensation is payable under EEOICPA. This term does not also include any request or demand for money made or sought pursuant to a life insurance or health insurance contract, or any request or demand for money made or sought by an individual other than the covered Part B employee or the covered Part E employee in that individual's own right (*e.g.*, a spouse's claim for loss of consortium), or any request or demand for money made or sought by the covered Part B employee or the covered Part E employee (or the

estate of a deceased covered Part B employee or deceased covered Part E employee) not for injuries incurred on account of an exposure for which compensation is payable under the EEOICPA (*e.g.*, a covered Part B employee's or a covered Part E employee's claim for damage to real or personal property).

(2) If a payment has been made pursuant to a final judgment or settlement in litigation seeking damages, OWCP shall subtract a portion of the dollar amount of such payment from the benefit payments to be made under EEOICPA. OWCP will calculate the amount to be subtracted from the benefit payments in the following manner:

(i) OWCP will first determine the value of the payment made pursuant to either a final judgment or settlement in litigation seeking damages by adding the dollar amount of any monetary damages (excluding contingent awards) and any medical expenses for treatment provided on or after the date the covered Part B employee or the covered Part E employee filed a claim for EEOICPA benefits that were paid for under the final judgment or settlement. In the event that these payments include a "structured" settlement (where a party makes an initial cash payment and also arranges, usually through the purchase of an annuity, for payments in the future), OWCP will usually accept the cost of the annuity to the purchaser as the dollar amount of the right to receive the future payments.

(ii) OWCP will then make certain deductions from the above dollar amount to arrive at the dollar amount to be subtracted from any unpaid EEOICPA benefits. Allowable deductions consist of attorney's fees OWCP deems reasonable, and itemized costs of suit (out-of-pocket expenditures not part of the normal overhead of a law firm's operation like filing fees, travel expenses, witness fees, and court reporter costs for transcripts) provided that adequate supporting documentation is submitted to OWCP.

(iii) The EEOICPA benefits that will be reduced will consist of any unpaid lump-sum payments payable in the future and medical benefits payable in the future. In those cases where it has

not yet paid EEOICPA benefits, OWCP will reduce such benefits on a dollar-for-dollar basis, beginning with the lump-sum payments first. If the amount to be subtracted exceeds the lump-sum payments, OWCP will reduce ongoing EEOICPA medical benefits payable in the future by the amount of any remaining surplus. This means that OWCP will apply the amount it would otherwise pay to reimburse the covered Part B employee or the covered Part E employee for any ongoing EEOICPA medical treatment to the remaining surplus until it is absorbed. In addition to this reduction of ongoing EEOICPA medical benefits, OWCP will not be the first payer for any medical expenses that are the responsibility of another party (who will instead be the first payer) as part of a final judgment or settlement in litigation seeking damages.

(3) The above reduction of EEOICPA benefits will not occur if an EEOICPA claimant had his or her award under section 5 of RECA reduced by the full amount of the payment made pursuant to a final judgment or settlement in litigation seeking damages. It will also not occur if an EEOICPA claimant's prior payment of EEOICPA benefits, or his or her workers' compensation benefits, were offset to reflect the full amount of the payment made pursuant to a final judgment or settlement in litigation seeking damages. However, if the prior reduction or offset of the above benefits did not reflect the full amount of the payment made pursuant to a final judgment or settlement in litigation seeking damages, OWCP will reduce currently payable EEOICPA benefits by the amount of any surplus final judgment or settlement payment that remains.

(c) Except as provided in § 30.506(b) of these regulations, when OWCP has verified the identity of every claimant who is entitled to the compensation payment, or to a share of the compensation payment, and has determined the correct amount of the payment or the share of the payment, OWCP shall notify every claimant, every duly appointed guardian or conservator of a claimant, or every person with power of attorney for a claimant, and require such person or persons to

complete a Form EN-20 providing payment information. Such form shall be signed and returned to OWCP within sixty days of the date of the form or within such greater period as may be allowed by OWCP. Failure to sign and return the form within the required time may be deemed to be a rejection of the payment. If the claimant dies before the payment is received, the person who receives the payment shall return it to OWCP for redetermination of the correct disbursement of the payment. No payment shall be made until OWCP has made a determination concerning the survivors related to a respective claim for benefits.

(d) The total amount of compensation (other than medical benefits) under Part E that can be paid to all claimants as a result of the exposure of a covered Part E employee shall not be more than \$250,000 in any circumstances.

**§ 30.506 To whom and in what manner will OWCP pay compensation?**

(a) Except with respect to claims under Part B of the Act for beryllium sensitivity, payment shall be made to the covered Part B employee or the covered Part E employee, to the duly appointed guardian or conservator of that individual, or to the person with power of attorney for that individual, unless the covered Part B employee or covered Part E employee is deceased at the time of the payment. In all cases involving a deceased covered Part B employee or deceased covered Part E employee, payment shall be made to the eligible surviving beneficiary or beneficiaries, to the duly appointed guardian or conservator of the eligible surviving beneficiary or beneficiaries, or to every person with power of attorney for an eligible surviving beneficiary, in accordance with the terms and conditions specified in sections 7384s(e), 7384u(e), and 7385s-3(c) and (d) of EEOICPA.

(b) Under Part B of the Act, compensation for any consequential injury, illness, impairment or disease is limited to payment of medical benefits for that injury, illness, impairment or disease. Under Part E of the Act, compensation for any consequential injury, illness, impairment or disease consists

of medical benefits for that injury, illness, impairment or disease, as well as any additional monetary benefits that are consistent with the terms of § 30.505(d).

(c) Rejected compensation payments, or shares of compensation payments, shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Fund.

(d) No covered Part B employee may receive more than one lump-sum payment under Part B of EEOICPA for any occupational illnesses he or she contracted. However, any individual, including a covered Part B employee who has received a lump-sum payment for his or her own occupational illness or illnesses, may receive one lump-sum payment for each deceased covered Part B employee for whom he or she qualifies as an eligible surviving beneficiary under Part B of the Act.

**§ 30.507 What compensation will be provided to covered Part B employees who only establish beryllium sensitivity under Part B of EEOICPA?**

The establishment of beryllium sensitivity does not entitle a covered Part B employee, or the eligible surviving beneficiary or beneficiaries of a deceased covered Part B employee, to any lump-sum payment provided for under Part B. Instead, a covered Part B employee whose sole accepted occupational illness is beryllium sensitivity shall receive beryllium sensitivity monitoring, as well as medical benefits for the treatment of this occupational illness in accordance with § 30.400 of these regulations.

**§ 30.508 What is beryllium sensitivity monitoring?**

Beryllium sensitivity monitoring shall consist of medical examinations to confirm and monitor the extent and nature of a covered Part B employee's beryllium sensitivity. Monitoring shall also include regular medical examinations, with diagnostic testing, to determine if the covered Part B employee has established chronic beryllium disease.